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HOUSE BILL 472

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; LOWERING THE LEGAL ALCOHOL CONCENTRATION LEVEL FOR PERSONS WITH A PRIOR DWI CONVICTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders ~~him~~ the person

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1 incapable of safely driving a vehicle to drive a vehicle within  
2 this state.

3 C. It is unlawful for a person who has an alcohol  
4 concentration of:

5 (1) [~~a person who has an alcohol concentration~~  
6 ~~of~~] eight one hundredths or more in [~~his~~] the person's blood or  
7 breath to drive a vehicle within this state; [~~or~~]

8 (2) six one hundredths or more in the person's  
9 blood or breath to drive a vehicle within this state if the  
10 person has a prior conviction pursuant to this section; or

11 [~~(2)~~] (3) [~~a person who has an alcohol~~  
12 ~~concentration of~~] four one hundredths or more in [~~his~~] the  
13 person's blood or breath to drive a commercial motor vehicle  
14 within this state.

15 D. Aggravated driving while under the influence of  
16 intoxicating liquor or drugs consists of a person who:

17 (1) has an alcohol concentration of sixteen  
18 one hundredths or more in [~~his~~] the person's blood or breath  
19 while driving a vehicle within this state;

20 (2) has caused bodily injury to a human being  
21 as a result of the unlawful operation of a motor vehicle while  
22 driving under the influence of intoxicating liquor or drugs; or

23 (3) refused to submit to chemical testing, as  
24 provided for in the Implied Consent Act, and in the judgment of  
25 the court, based upon evidence of intoxication presented to the

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1 court, was under the influence of intoxicating liquor or drugs.

2 E. A person under first conviction pursuant to this  
3 section shall be punished, notwithstanding the provisions of  
4 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
5 ninety days or by a fine of not more than five hundred dollars  
6 (\$500), or both; provided that if the sentence is suspended in  
7 whole or in part or deferred, the period of probation may  
8 extend beyond ninety days but shall not exceed one year. Upon  
9 a first conviction pursuant to this section, an offender may be  
10 sentenced to not less than forty-eight hours of community  
11 service or a fine of three hundred dollars (\$300). The  
12 offender shall be ordered by the court to participate in and  
13 complete a screening program described in Subsection K of this  
14 section and to attend a driver rehabilitation program for  
15 alcohol or drugs, also known as a "DWI school", approved by the  
16 bureau and also may be required to participate in other  
17 rehabilitative services as the court shall determine to be  
18 necessary. In addition to those penalties, when an offender  
19 commits aggravated driving while under the influence of  
20 intoxicating liquor or drugs, the offender shall be sentenced  
21 to not less than forty-eight consecutive hours in jail. If an  
22 offender fails to complete, within a time specified by the  
23 court, any community service, screening program, treatment  
24 program or DWI school ordered by the court or fails to comply  
25 with any other condition of probation, the offender shall be

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1 sentenced to not less than an additional forty-eight  
2 consecutive hours in jail. Notwithstanding any provision of  
3 law to the contrary, if an offender's sentence was suspended or  
4 deferred in whole or in part, and the offender violates any  
5 condition of probation, the court may impose any sentence that  
6 the court could have originally imposed and credit shall not be  
7 given for time served by the offender on probation. Any jail  
8 sentence imposed pursuant to this subsection for failure to  
9 complete, within a time specified by the court, any community  
10 service, screening program, treatment program or DWI school  
11 ordered by the court or for aggravated driving while under the  
12 influence of intoxicating liquor or drugs shall not be  
13 suspended, deferred or taken under advisement. On a first  
14 conviction pursuant to this section, any time spent in jail for  
15 the offense prior to the conviction for that offense shall be  
16 credited to any term of imprisonment fixed by the court. A  
17 deferred sentence pursuant to this subsection shall be  
18 considered a first conviction for the purpose of determining  
19 subsequent convictions.

20 F. A second or third conviction pursuant to this  
21 section shall be punished, notwithstanding the provisions of  
22 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
23 three hundred sixty-four days or by a fine of not more than one  
24 thousand dollars (\$1,000), or both; provided that if the  
25 sentence is suspended in whole or in part, the period of

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1 probation may extend beyond one year but shall not exceed five  
2 years. Notwithstanding any provision of law to the contrary  
3 for suspension or deferment of execution of a sentence:

4 (1) upon a second conviction, an offender  
5 shall be sentenced to a jail term of not less than ninety-six  
6 consecutive hours, forty-eight hours of community service and a  
7 fine of five hundred dollars (\$500). In addition to those  
8 penalties, when an offender commits aggravated driving while  
9 under the influence of intoxicating liquor or drugs, the  
10 offender shall be sentenced to a jail term of not less than  
11 ninety-six consecutive hours. If an offender fails to  
12 complete, within a time specified by the court, any community  
13 service, screening program or treatment program ordered by the  
14 court, the offender shall be sentenced to not less than an  
15 additional seven consecutive days in jail. A penalty imposed  
16 pursuant to this paragraph shall not be suspended or deferred  
17 or taken under advisement; and

18 (2) upon a third conviction, an offender shall  
19 be sentenced to a jail term of not less than thirty consecutive  
20 days and a fine of seven hundred fifty dollars (\$750). In  
21 addition to those penalties, when an offender commits  
22 aggravated driving while under the influence of intoxicating  
23 liquor or drugs, the offender shall be sentenced to a jail term  
24 of not less than sixty consecutive days. If an offender fails  
25 to complete, within a time specified by the court, any

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1 screening program or treatment program ordered by the court,  
2 the offender shall be sentenced to not less than an additional  
3 sixty consecutive days in jail. A penalty imposed pursuant to  
4 this paragraph shall not be suspended or deferred or taken  
5 under advisement.

6 G. Upon a fourth conviction pursuant to this  
7 section, an offender is guilty of a fourth degree felony and,  
8 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
9 shall be sentenced to a term of imprisonment of eighteen  
10 months, six months of which shall not be suspended, deferred or  
11 taken under advisement.

12 H. Upon a fifth conviction pursuant to this  
13 section, an offender is guilty of a fourth degree felony and,  
14 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
15 shall be sentenced to a term of imprisonment of two years, one  
16 year of which shall not be suspended, deferred or taken under  
17 advisement.

18 I. Upon a sixth conviction pursuant to this  
19 section, an offender is guilty of a third degree felony and,  
20 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
21 shall be sentenced to a term of imprisonment of thirty months,  
22 eighteen months of which shall not be suspended, deferred or  
23 taken under advisement.

24 J. Upon a seventh or subsequent conviction pursuant  
25 to this section, an offender is guilty of a third degree felony

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1 and, notwithstanding the provisions of Section 31-18-15 NMSA  
2 1978, shall be sentenced to a term of imprisonment of three  
3 years, two years of which shall not be suspended, deferred or  
4 taken under advisement.

5 K. Upon any conviction pursuant to this section, an  
6 offender shall be required to participate in and complete,  
7 within a time specified by the court, an alcohol or drug abuse  
8 screening program approved by the department of finance and  
9 administration and, if necessary, a treatment program approved  
10 by the court. The requirement imposed pursuant to this  
11 subsection shall not be suspended, deferred or taken under  
12 advisement.

13 L. Upon a second or third conviction pursuant to  
14 this section, an offender shall be required to participate in  
15 and complete, within a time specified by the court:

16 (1) not less than a twenty-eight-day  
17 inpatient, residential or in-custody substance abuse treatment  
18 program approved by the court;

19 (2) not less than a ninety-day outpatient  
20 treatment program approved by the court;

21 (3) a drug court program approved by the  
22 court; or

23 (4) any other substance abuse treatment  
24 program approved by the court.

25 The requirement imposed pursuant to this subsection shall

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1 not be suspended, deferred or taken under advisement.

2 M Upon a felony conviction pursuant to this  
3 section, the corrections department shall provide substance  
4 abuse counseling and treatment to the offender in its custody.  
5 While the offender is on probation or parole under its  
6 supervision, the corrections department shall also provide  
7 substance abuse counseling and treatment to the offender or  
8 shall require the offender to obtain substance abuse counseling  
9 and treatment.

10 N. Upon a first conviction for aggravated driving  
11 while under the influence of intoxicating liquor or drugs  
12 pursuant to the provisions of Subsection D of this section, as  
13 a condition of probation, an offender shall be required to have  
14 an ignition interlock device installed and operating for a  
15 period of one year on all motor vehicles driven by the  
16 offender, pursuant to rules adopted by the bureau. Unless  
17 determined by the sentencing court to be indigent, the offender  
18 shall pay all costs associated with having an ignition  
19 interlock device installed on the appropriate motor vehicles.  
20 If an offender drives a motor vehicle that does not have an  
21 ignition interlock device installed on the motor vehicle, the  
22 offender may be in violation of the terms and conditions of  
23 [~~his~~] the offender's probation.

24 O. Upon a first conviction for driving while under  
25 the influence of intoxicating liquor or drugs pursuant to the

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1 provisions of Subsection A, B or C of this section, as a  
2 condition of probation, an offender may be required to have an  
3 ignition interlock device installed and operating for a period  
4 of one year on all motor vehicles driven by the offender,  
5 pursuant to rules adopted by the bureau. Unless determined by  
6 the sentencing court to be indigent, the offender shall pay all  
7 costs associated with having an ignition interlock device  
8 installed on the appropriate motor vehicles. If an offender  
9 drives a motor vehicle that does not have an ignition interlock  
10 device installed on the motor vehicle, the offender may be in  
11 violation of the terms and conditions of [~~his~~] the offender's  
12 probation.

13 P. Upon any subsequent conviction pursuant to this  
14 section, as a condition of probation, a subsequent offender  
15 shall be required to have an ignition interlock device  
16 installed and operating for a period of at least one year on  
17 all motor vehicles driven by the subsequent offender, pursuant  
18 to rules adopted by the bureau. Unless determined by the  
19 sentencing court to be indigent, the subsequent offender shall  
20 pay all costs associated with having an ignition interlock  
21 device installed on the appropriate motor vehicles. If a  
22 subsequent offender drives a motor vehicle that does not have  
23 an ignition interlock device installed on the motor vehicle,  
24 the subsequent offender may be in violation of the terms and  
25 conditions of [~~his~~] the subsequent offender's probation.

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1           Q. In the case of a first, second or third offense  
2 under this section, the magistrate court has concurrent  
3 jurisdiction with district courts to try the offender.

4           R. A conviction pursuant to a municipal or county  
5 ordinance in New Mexico or a law of any other jurisdiction,  
6 territory or possession of the United States or of a tribe,  
7 when that ordinance or law is equivalent to New Mexico law for  
8 driving while under the influence of intoxicating liquor or  
9 drugs, and prescribes penalties for driving while under the  
10 influence of intoxicating liquor or drugs, shall be deemed to  
11 be a conviction pursuant to this section for purposes of  
12 determining [~~whether a conviction is a second or subsequent~~  
13 ~~conviction~~] the existence and number of prior convictions.

14           S. In addition to any other fine or fee that may be  
15 imposed pursuant to the conviction or other disposition of the  
16 offense under this section, the court may order the offender to  
17 pay the costs of any court-ordered screening and treatment  
18 programs.

19           T. As used in this section:

20               (1) "bodily injury" means an injury to a  
21 person that is not likely to cause death or great bodily harm  
22 to the person, but does cause painful temporary disfigurement  
23 or temporary loss or impairment of the functions of any member  
24 or organ of the person's body;

25               (2) "commercial motor vehicle" means a motor

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1 vehicle or combination of motor vehicles used in commerce to  
2 transport passengers or property if the motor vehicle:

3 (a) has a gross combination weight  
4 rating of more than twenty-six thousand pounds inclusive of a  
5 towed unit with a gross vehicle weight rating of more than ten  
6 thousand pounds;

7 (b) has a gross vehicle weight rating of  
8 more than twenty-six thousand pounds;

9 (c) is designed to transport sixteen or  
10 more passengers, including the driver; or

11 (d) is of any size and is used in the  
12 transportation of hazardous materials, which requires the motor  
13 vehicle to be placarded under applicable law; and

14 (3) "conviction" means an adjudication of  
15 guilt and does not include imposition of a sentence. "

16 Section 2. Section 66-8-102.1 NMSA 1978 (being Laws 1982,  
17 Chapter 102, Section 2, as amended by Laws 2003, Chapter 51,  
18 Section 11 and by Laws 2003, Chapter 90, Section 4) is amended  
19 to read:

20 "66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the  
21 complaint or information alleges a violation of Section  
22 66-8-102 NMSA 1978, any plea of guilty thereafter entered in  
23 satisfaction of the charges shall include at least a plea of  
24 guilty to the violation of one of the subsections of Section  
25 66-8-102 NMSA 1978, and no other disposition by plea of guilty

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1 to any other charge in satisfaction of the charge shall be  
2 authorized if the results of a test performed pursuant to the  
3 Implied Consent Act disclose that the blood or breath of the  
4 person charged contains an alcohol concentration of:

5 A. eight one hundredths or more; [or]

6 B. six one hundredths or more if the person has a  
7 prior conviction pursuant to Section 66-8-102 NMSA 1978; or

8 ~~[B-]~~ C. four one hundredths or more if the person  
9 charged is driving a commercial motor vehicle. "

10 Section 3. Section 66-8-110 NMSA 1978 (being Laws 1978,  
11 Chapter 35, Section 518, as amended by Laws 2003, Chapter 51,  
12 Section 12 and by Laws 2003, Chapter 90, Section 5) is amended  
13 to read:

14 "66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL  
15 ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

16 A. The results of a test performed pursuant to the  
17 Implied Consent Act may be introduced into evidence in any  
18 civil action or criminal action arising out of the acts alleged  
19 to have been committed by the person tested for driving a motor  
20 vehicle while under the influence of intoxicating liquor or  
21 drugs.

22 B. When the blood or breath of the person tested  
23 contains:

24 (1) an alcohol concentration of less than four  
25 one hundredths, it shall be presumed that the person was not

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1 under the influence of intoxicating liquor;

2 (2) an alcohol concentration of at least four  
3 one hundredths but less than eight one hundredths:

4 (a) no presumption shall be made that  
5 the person either was or was not under the influence of  
6 intoxicating liquor, [~~unless the person is driving a commercial~~  
7 ~~motor vehicle~~] except as otherwise provided in this subsection;  
8 and

9 (b) the amount of alcohol in the  
10 person's blood may be considered with other competent evidence  
11 in determining whether the person was under the influence of  
12 intoxicating liquor; [~~or~~]

13 (3) an alcohol concentration of six one  
14 hundredths or more and the person has a prior conviction  
15 pursuant to Section 66-8-102 NMSA 1978, it shall be presumed  
16 that the person is under the influence of intoxicating liquor;  
17 or

18 [~~(3)~~] (4) an alcohol concentration of four one  
19 hundredths or more and the person is driving a commercial  
20 vehicle, it shall be presumed that the person is under the  
21 influence of intoxicating liquor.

22 C. The arresting officer shall charge the person  
23 tested with a violation of Section 66-8-102 NMSA 1978 when the  
24 blood or breath of the person contains an alcohol concentration  
25 of:

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1 (1) eight one hundredths or more; [~~or~~]  
2 (2) six one hundredths or more if the person  
3 has a prior conviction pursuant to Section 66-8-102 NMSA 1978;  
4 or

5 [~~(2)~~] (3) four one hundredths or more if the  
6 person is driving a commercial motor vehicle.

7 D. When a person is less than twenty-one years of  
8 age and the blood or breath of the person contains an alcohol  
9 concentration of two one hundredths or more, the person's  
10 driving privileges shall be revoked pursuant to the provisions  
11 of the Implied Consent Act.

12 E. The determination of alcohol concentration shall  
13 be based on the grams of alcohol in one hundred milliliters of  
14 blood or the grams of alcohol in two hundred ten liters of  
15 breath.

16 F. The presumptions in Subsection B of this section  
17 do not limit the introduction of other competent evidence  
18 concerning whether the person was under the influence of  
19 intoxicating liquor.

20 G. If a person is convicted of driving a motor  
21 vehicle while under the influence of intoxicating liquor, the  
22 trial judge shall be required to inquire into the past driving  
23 record of the person before sentence is entered in the matter."

24 Section 4. Section 66-8-111 NMSA 1978 (being Laws 1978,  
25 Chapter 35, Section 519, as amended by Laws 2003, Chapter 51,  
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1 Section 13 and by Laws 2003, Chapter 90, Section 6) is amended  
2 to read:

3 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--  
4 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --

5 A. If a person under arrest for violation of an  
6 offense enumerated in the Motor Vehicle Code refuses upon  
7 request of a law enforcement officer to submit to chemical  
8 tests designated by the law enforcement agency as provided in  
9 Section 66-8-107 NMSA 1978, none shall be administered except  
10 when a municipal judge, magistrate or district judge issues a  
11 search warrant authorizing chemical tests as provided in  
12 Section 66-8-107 NMSA 1978 upon ~~[his]~~ the judge's or  
13 magistrate's finding in a law enforcement officer's written  
14 affidavit that there is probable cause to believe that the  
15 person has driven a motor vehicle while under the influence of  
16 alcohol or a controlled substance, thereby causing the death or  
17 great bodily injury of another person, or there is probable  
18 cause to believe that the person has committed a felony while  
19 under the influence of alcohol or a controlled substance and  
20 that chemical tests as provided in Section 66-8-107 NMSA 1978  
21 will produce material evidence in a felony prosecution.

22 B. The department, upon receipt of a statement  
23 signed under penalty of perjury from a law enforcement officer  
24 stating the officer's reasonable grounds to believe the  
25 arrested person had been driving a motor vehicle within this

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1 state while under the influence of intoxicating liquor or drugs  
2 and that, upon [~~his~~] the officer's request, the person refused  
3 to submit to a chemical test after being advised that failure  
4 to submit could result in revocation of [~~his~~] the person's  
5 privilege to drive, shall revoke the person's New Mexico  
6 driver's license or any nonresident operating privilege for a  
7 period of one year or until all conditions for license  
8 reinstatement are met, whichever is later.

9 C. The department, upon receipt of a statement  
10 signed under penalty of perjury from a law enforcement officer  
11 stating the officer's reasonable grounds to believe the  
12 arrested person had been driving a motor vehicle within this  
13 state while under the influence of intoxicating liquor and that  
14 the person submitted to chemical testing pursuant to Section  
15 66-8-107 NMSA 1978 and the test results indicated an alcohol  
16 concentration in the person's blood or breath of eight one  
17 hundredths or more if the person is twenty-one years of age or  
18 older, six one hundredths or more if the person has a prior  
19 conviction pursuant to Section 66-8-102 NMSA 1978, four one  
20 hundredths or more if the person is driving a commercial motor  
21 vehicle or two one hundredths or more if the person is less  
22 than twenty-one years of age, shall revoke the person's license  
23 or permit to drive or [~~his~~] the person's nonresident operating  
24 privilege for a period of:

- 25 (1) ninety days or until all conditions for

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1 license reinstatement are met, whichever is later, if the  
2 person is twenty-one years of age or older;

3 (2) six months or until all conditions for  
4 license reinstatement are met, whichever is later, if the  
5 person is less than twenty-one years of age and [~~has not~~  
6 ~~previously had his~~] the person's license has not been  
7 previously revoked pursuant to the provisions of this section,  
8 notwithstanding any provision of the Children's Code; or

9 (3) one year or until all conditions for  
10 license reinstatement are met, whichever is later, if the  
11 [~~person has previously had his~~] person's license has been  
12 previously revoked pursuant to the provisions of this section,  
13 notwithstanding the provisions of Paragraph (1) or (2) of this  
14 subsection or any provision of the Children's Code.

15 D. The determination of alcohol concentration shall  
16 be based on the grams of alcohol in one hundred milliliters of  
17 blood or the grams of alcohol in two hundred ten liters of  
18 breath.

19 E. If the person subject to the revocation  
20 provisions of this section is a resident or will become a  
21 resident within one year and is without a license to operate a  
22 motor vehicle in this state, the department shall deny the  
23 issuance of a license to [~~him~~] the person for the appropriate  
24 period of time as provided in Subsections B and C of this  
25 section.

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1 F. A statement signed by a law enforcement officer,  
2 pursuant to the provisions of Subsection B or C of this  
3 section, shall be sworn to by the officer or shall contain a  
4 declaration substantially to the effect: "I hereby declare  
5 under penalty of perjury that the information given in this  
6 statement is true and correct to the best of my knowledge.". A  
7 law enforcement officer who signs a statement, knowing that the  
8 statement is untrue in any material issue or matter, is guilty  
9 of perjury as provided in Section 66-5-38 NMSA 1978."

10 Section 5. Section 66-8-111.1 NMSA 1978 (being Laws 1984,  
11 Chapter 72, Section 7, as amended by Laws 2003, Chapter 51,  
12 Section 14 and by Laws 2003, Chapter 90, Section 7) is amended  
13 to read:

14 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR  
15 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO  
16 HEARING.--On behalf of the department, a law enforcement  
17 officer requesting a chemical test or directing the  
18 administration of a chemical test pursuant to Section 66-8-107  
19 NMSA 1978 shall serve immediate written notice of revocation  
20 and of right to a hearing on a person who refuses to permit  
21 chemical testing or on a person who submits to a chemical test  
22 the results of which indicate an alcohol concentration in the  
23 person's blood or breath of eight one hundredths or more if the  
24 person is twenty-one years of age or older, six one hundredths  
25 or more if the person has a prior conviction pursuant to

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1 Section 66-8-102 NMSA 1978, four one hundredths or more if the  
2 person is driving a commercial motor vehicle or two one  
3 hundredths or more if the person is less than twenty-one years  
4 of age. Upon serving notice of revocation, the law enforcement  
5 officer shall take the license or permit of the driver, if any,  
6 and issue a temporary license valid for twenty days or, if the  
7 driver requests a hearing pursuant to Section 66-8-112 NMSA  
8 1978, valid until the date the department issues the order  
9 following that hearing; provided that a temporary license shall  
10 not be issued to a driver without a valid license or permit.  
11 The law enforcement officer shall send the person's driver's  
12 license to the department along with the signed statement  
13 required pursuant to Section 66-8-111 NMSA 1978. "

14 Section 6. Section 66-8-112 NMSA 1978 (being Laws 1978,  
15 Chapter 35, Section 520, as amended by Laws 2003, Chapter 51,  
16 Section 15 and by Laws 2003, Chapter 90, Section 8) is amended  
17 to read:

18 "66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO  
19 DRIVE-- NOTICE-- EFFECTIVE DATE-- HEARING-- HEARING COSTS--  
20 REVIEW. --

21 A. The effective date of revocation pursuant to  
22 Section 66-8-111 NMSA 1978 is twenty days after notice of  
23 revocation or, if the person whose driver's license or  
24 privilege to drive is being revoked or denied requests a  
25 hearing pursuant to this section, the date that the department

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1 issues the order following that hearing. The date of notice of  
2 revocation is:

3 (1) the date the law enforcement officer  
4 serves written notice of revocation and of right to a hearing  
5 pursuant to Section 66-8-111.1 NMSA 1978; or

6 (2) in the event the results of a chemical  
7 test cannot be obtained immediately, the date notice of  
8 revocation is served by mail by the department. This notice of  
9 revocation and of right to a hearing shall be sent by certified  
10 mail and shall be deemed to have been served on the date borne  
11 by the return receipt showing delivery, refusal of the  
12 addressee to accept delivery or attempted delivery of the  
13 notice at the address obtained by the arresting law enforcement  
14 officer or on file with the department.

15 B. Within ten days after receipt of notice of  
16 revocation pursuant to Subsection A of this section, a person  
17 whose license or privilege to drive is revoked or denied or the  
18 person's agent may request a hearing. The hearing request  
19 shall be made in writing and shall be accompanied by a payment  
20 of twenty-five dollars (\$25.00) or a sworn statement of  
21 indigency on a form provided by the department. A standard for  
22 indigency shall be established pursuant to regulations adopted  
23 by the department. Failure to request a hearing within ten  
24 days shall result in forfeiture of the person's right to a  
25 hearing. Any person less than eighteen years of age who fails

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1 to request a hearing within ten days shall have notice of  
2 revocation sent to [~~his~~] the person's parent, guardian or  
3 custodian by the department. A date for the hearing shall be  
4 set by the department, if practical, within thirty days after  
5 receipt of notice of revocation. The hearing shall be held in  
6 the county in which the offense for which the person was  
7 arrested took place.

8 C. The department may postpone or continue any  
9 hearing on its own motion or upon application from the person  
10 and for good cause shown for a period not to exceed ninety days  
11 from the date of notice of revocation and provided that the  
12 department extends the validity of the temporary license for  
13 the period of the postponement or continuation.

14 D. At the hearing, the department or its agent may  
15 administer oaths and may issue subpoenas for the attendance of  
16 witnesses and the production of relevant books and papers.

17 E. The hearing shall be limited to the issues:

18 (1) whether the law enforcement officer had  
19 reasonable grounds to believe that the person had been driving  
20 a motor vehicle within this state while under the influence of  
21 intoxicating liquor or drugs;

22 (2) whether the person was arrested;

23 (3) whether this hearing is held no later than  
24 ninety days after notice of revocation; and either

25 (4) whether:

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1 (a) the person refused to submit to a  
2 test upon request of the law enforcement officer; and

3 (b) the law enforcement officer advised  
4 that the failure to submit to a test could result in revocation  
5 of the person's privilege to drive; or

6 (5) whether:

7 (a) the chemical test was administered  
8 pursuant to the provisions of the Implied Consent Act; and

9 (b) the test results indicated an  
10 alcohol concentration in the person's blood or breath of eight  
11 one hundredths or more if the person is twenty-one years of age  
12 or older, six one hundredths or more if the person has a prior  
13 conviction pursuant to Section 66-8-102 NMSA 1978, four one  
14 hundredths or more if the person is driving a commercial motor  
15 vehicle or two one hundredths or more if the person is less  
16 than twenty-one years of age.

17 F. The department shall enter an order sustaining  
18 the revocation or denial of the person's license or privilege  
19 to drive if the department finds that:

20 (1) the law enforcement officer had reasonable  
21 grounds to believe the driver was driving a motor vehicle while  
22 under the influence of intoxicating liquor or drugs;

23 (2) the person was arrested;

24 (3) this hearing is held no later than ninety  
25 days after notice of revocation; and

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(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised ~~him~~ the person that ~~his~~ failure to submit to the test could result in the revocation of ~~his~~ the person's privilege to drive; or

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, six one hundredths or more if the person has a prior conviction pursuant to Section 66-8-102 NMSA 1978, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the department, the person's license shall not be revoked.

H. A person adversely affected by an order of the department may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. The district court, upon thirty days' written notice to the department, shall hear the case. On

1 review, it is for the court to determine only whether  
2 reasonable grounds exist for revocation or denial of the  
3 person's license or privilege to drive based on the record of  
4 the administrative proceeding.

5 I. Any person less than eighteen years of age shall  
6 have results of [~~his~~] the person's hearing forwarded by the  
7 department to [~~his~~] the person's parent, guardian or  
8 custodian. "

9 Section 7. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 2005.

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